

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Applications of Ohio)	
Power Company for Approval of the)	
Shutdown of Unit 5 of the Philip Sporn)	Case No. 10-1454-EL-RDR
Generating Station and to Establish a Plant)	
Shutdown Rider)	
)	

**MOTION TO INTERVENE
BY THE
OHIO ENVIRONMENTAL COUNCIL**

The Ohio Environmental Council (“OEC”) hereby moves to intervene in this case in which the Ohio Power Company (“OPCo”) seeks approval from the Public Utilities Commission of Ohio (“PUCO” or “Commission”) to recover costs associated with retiring an existing generation unit at its Philip Sporn Plant in New Haven, West Virginia, along the Ohio River. As more fully discussed in the accompanying memorandum, the Ohio Environmental Council (“OEC”) has a real and substantial interest in this proceeding, and the disposition of this case may impede its ability to protect that interest. As a general proposition, the OEC supports retirements of coal facilities in favor of energy efficiency and alternative energy production. Thus, the OEC has an interest in decisions that will impact retirements, including the PUCO’s decision to award or deny cost recovery to utilities that retire coal units. The interests of OEC, Ohio’s leading environmental advocacy organization, are not currently represented by any existing party, and its participation in this proceeding will contribute to a just and expeditious resolution of the issues involved. OEC’s participation will not unduly

delay the proceeding or unjustly prejudice any existing party. Accordingly, OEC hereby moves to intervene in this proceeding pursuant to R.C. 4903.221 and O.A.C. 4901-1-11.

WHEREFORE, OEC respectfully requests that the Commission grant its motion to intervene.

Respectfully Submitted,

/s/ William T. Reisinger
William T. Reisinger, Counsel of Record
Megan De Lisi
Nolan Moser
Trent A. Dougherty

Ohio Environmental Council
1207 Grandview Avenue, Suite 201
Columbus, Ohio 43212-3449
(614) 487-7506 - Telephone
(614) 487-7510 - Fax
will@theoec.org
megan@theoec.org
nolan@theoec.org
trent@theoec.org

Attorneys for the OEC

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MEMORANDUM IN SUPPORT

INTRODUCTION

R.C. Section 4903.221 provides that any “person who may be adversely affected by a public utilities commission proceeding may intervene in such proceeding.” OEC is a non-profit, charitable organization comprised of a network of over 100 affiliated group members whose mission is to secure a healthier environment for all Ohioans. Throughout its 40-year history, OEC has been a leading advocate for fresh air, clean water, and sustainable land and energy use. In this proceeding, OPCo seeks approval of non-bypassable rider to recover early closure costs. The OEC, as Ohio’s leading environmental advocate, has a special interest in supporting utilities’ efforts to transition away from fossil fuel-based energy production, in favor of cleaner sources of generation. The OEC would like the chance to offer comment on the Commission’s decision in this proceeding.

ARGUMENT

A. The Nature of OEC’s Interest.

R.C. 4903.221(B) outlines four factors that the Commission shall consider when ruling on a motion to intervene in a proceeding. First, pursuant to R.C. 4903.221(B)(1), the

Commission shall consider “The nature and extent of the prospective intervenor’s interest.” The OEC supports the retirement of coal-fired units in favor of energy efficiency, renewable energy, and advanced energy resources. However, the OEC wants to assure that cost recovery for coal retirements is only awarded for projects that will promote additional efficiency or alternative energy measures. The OEC intends to intervene in this case to support or otherwise provide comment on the Commission’s decision of whether to award cost recovery.

B. The Legal Position Advanced by the OEC.

Second, pursuant to R.C. 4903.221(B)(2), the Commission shall consider “The legal position advanced by the prospective intervenor and its probable relation to the merits of the case.” OEC maintains that the proposed coal retirement should be eligible for cost recovery only if that generation will be replaced by energy efficiency or alternative energy resources. Cost recovery should not be awarded if the unit closure will be offset by increases in other fossil fuel generation. That is, cost recovery in the amount requested may not be appropriate if the unit closure does not produce air quality or other consumer and environmental benefits.

C. The OEC Will Not Unduly Prolong These Proceedings.

Third, pursuant to R.C. 4903.221(B)(3), the Commission shall consider “Whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings.” OEC has significant experience dealing with energy questions before the Commission and will not seek to delay the proceeding. OEC looks forward to providing additional comment on this docket. OEC’s intervention will not unduly prolong or delay these proceedings.

D. The OEC Will Significantly Contribute To This Case.

Fourth, pursuant to R.C. 4903.221(B)(4), the Commission shall consider “Whether the prospective intervenor will significantly contribute to full development and equitable

resolution of the factual issues.” OEC has actively participated in dozens of cases before the PUCO, has never been denied intervention, and has provided valuable contributions in numerous cases. Moreover, as Ohio’s leading environmental advocacy organization, the OEC has a special perspective and interest which will add value to this proceeding.

E. The OEC Satisfies the Criteria Outlined in the Commission’s Rules.

OEC also satisfies the intervention requirements outlined in the Commission’s rules. The criteria for intervention established by O.A.C. 4901-1-11(B) are identical to those provided by R.C. 4903.221, with the exception that the rules add a fifth factor that the Commission shall consider when ruling on a motion to intervene. Pursuant to O.A.C. 4901-1-11(B)(5), the Commission shall consider “The extent to which the [intervenor’s] interest is represented by existing parties.” OEC’s interest is not fully represented by existing parties. No other environmental advocate has requested leave to intervene in this case. OEC is the leading advocate for Ohio’s environment. No other party to this proceeding has the mission of securing healthy air for all Ohioans, and no other party has been a continuous participant in cases before the Commission for the sole purpose of furthering this mission.

Finally, it is the Commission’s stated policy “to encourage the broadest possible participation in its proceedings.”¹ The Commission should not apply its intervention criteria in a manner that would favor one environmental or consumer advocate to the exclusion of others.

CONCLUSION

OEC meets all the criteria established by R.C. 4903.221 and O.A.C. 4901-1-11(B)(5) and therefore should be granted intervenor status in this proceeding.

¹ See, e.g., *Cleveland Elec. Illum. Co.*, Case No. 85-675-EL-AIR, Entry dated January 14, 1986, at 2).

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will@theoec.org
megan@theoec.org
nolan@theoec.org
trent@theoec.org

Attorneys for OEC

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been served upon the following parties by first class or electronic mail this 26th day of October, 2010.

/s/ William T. Reisinger

Duane Luckey
Assistant Attorney General
Public Utilities Commission of Ohio
180 East Broad Street, 6th Floor
Columbus, Ohio 43215

Ann Hotz
Assistant Consumers' Counsel
Office of the Ohio Consumers' Counsel
10 West Broad Street, 18th Floor
Columbus, Ohio 43215
hotz@occ.state.oh.us

David C. Rinebolt
Ohio Partners for Affordable Energy
231 West Lima Street
P.O. Box 1793
Findlay, Ohio 45839
drinebolt@ohiopartners.org

Steven T. Nourse
American Electric Power Service
Corporation
1 Riverside Plaza, 29th Floor
Columbus OH 43215
Phone: (614) 716-1608
Fax: (614) 716-2950
stnourse@aep.com

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Summary: Motion Motion to Intervene and Memorandum in Support electronically filed by Ms. Megan De Lisi on behalf of Ohio Environmental Council